IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 914 of 1998
in
SPECIAL CIVIL APPLICATION No 6580 of 1997
with
CIVIL APPLICATION NO 8154OF 1998
AND
LETTERS PATENT APPEAL No 972 of 1998
IN
SPECIALCIVIL APPLICAIONNO 6579 OF1997
WITH
CIVILAPPLICATION NO 8151 OF 1998
For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL R SHAH

Versus

SHAW WALLACE & COMPANY LTD.

Appearance:

1. LETTERS PATENT APPEAL No. 914 of 1998
MR NR SHAHANI for Appellant
MR RP BHATT FOR MR MANISH R BHATT for Respondent No. 1

2. LETTERS PATENT APPEALNo 972 of 1998
MR NR SHAHANI for Appellant
MR RP BHATT FOR MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

Date of decision: 10/12/1999.

CAV JUDGEMENT

The present appeals have been preferred by the appellants workmen against the judgment and order dated 26.6.1998 passed by the learned single Judge in the aforesaid respective petitions. The facts of the letters patent appeal no. 914 of 1998 relating to the appellant Jentilal R. Shah are as under :

1. The appellant workman was working with the respondent Co. as permanent clerk whose services were terminated by the respondent Co. under order dated 1st September, 1980. Said action of termination of his services was challenged by the appellant workman by filing reference before the labour court, Baroda being Reference No. 346 of 1980.

2. Similarly, the appellant in letters patent appeal no. 972 of 1998 was also working with the respondent CO. as salesman and his services were terminated on 1.9.80 by the respondent Co. on the ground that the agricultural zone (west) of the respondent CO. is not earning and, therefore, both the workmen were retrenched. The appellant in letters patent appeal no. 972 of 1998 had challenged the said action of termination of his services by filing reference No. 353 of 1981 before the labour court, Baroda. The labour Court, Baroda decided both the references by common judgment and award since common questions of law and facts were involved in both the said references. The labour court, after appreciating the facts and circumstances of the case and the evidence brought on record, came to the conclusion that the action of retrenchment of the workmen was illegal as there were vacancies available in the other section and place of the respondent CO. and yet, the workmen were not offered any work at that place. The labour court has also considered that the legal rights of the appellants workmen in respect of gratuity, notice pay and retrenchment compensation are paid but as regards earned leave and other benefits were not paid to the appellants and ultimately, the labour court passed award of reinstatement in service with back wages and continuity of service. The labour court has also pointed out that the workman i.e. the appellant in letters patent appeal no.. 914 of 1998 namely Mr. J.R.Shah has reached the age of superannuation pending the reference and, therefore, the labour court considered that it is not necessary to grant reinstatement to the said workman. The labour court therefore, granted full back wages from

the date of termination till the date of superannuation of Mr. Shah under its award dated 29.5.97 and also directed the respondent co. to reinstate the appellant Mr. Trivedi in letters patent appeal no. 972 of 1998 with continuity of service and 90 percent of the back wages.

2. Said common judgment and award passed by the labour court, Baroda was challenged by the respondent Co. before this court by filing the aforesaid petitions which were allowed by the learned single Judge by quashing and setting aside the impugned judgment and award of the labour court and, hence, the appellants have preferred the present appeals before this court under clause 15 of the Letters Patent Act.

3. Learned advocate Mr. Sahani appearing for the appellants workmen has submitted that the learned single Judge has committed gross error in allowing the petitions and reversing the findings of fact given by the labour court. He further submitted that the minutes of settlement between the respondent co. and the union cannot be considered tobe the settlement within the meaning of section 2P of the Industrial Disputes Act, 1947 and such settlement is not binding to the appellants since the appellants are not a members of the said union. According to him, no offer for work was made and no amount of retrenchment compensation was paid by the respondent Co. to the appellants. Mr. Sahani has submitted that the learned Single Judge has committed gross error while exercising the supervisory jurisdiction under Article 226 and/or 227 of the Constitution of India and the the interference of the learned Single Judge is not warranted under the settled law laid down by the apex Court.

4. On the other hand, Mr. R.P.Bhatt, the learned Senior Advocate appearing for Mr. M.R.Bhatt, the learned advocate for the respondent CO. has submitted that basically, the findings given by the labour court were contrary to the facts on record and the minutes between the union and the respondent CO. has been proved by leading oral evidence of the representative of the union before the labour court and, therefore, since the minutes were proved before the labour court, the labour court ought to have considered the same as settlement between the respondent co. and the union and ought to have held that the said settlement is binding to the appellants herein. According to him, in not doing so, the labour court has erred in law and facts and, therefore, the

learned Single Judge was perfectly justified in passing the impugned judgment and order by interfering with the findings of the labour court in the impugned judgment and award. He has also submitted that these two workmen were offered job and also tested by interview at Bombay in order to accommodate them by sending communication dated 16th June, 1980 but they were not found suitable for the vacancy for which they were considered. Mr. Bhatt has submitted that in case the respondent Co. will reconsider and restart its business in Gujarat, then, in such case, the respondent Co. will certainly give the first preference to those workmen who have been retrenched provided that they are satisfying the age criteria and have not reached the age of superannuation. According to him, the impugned judgment has been passed by the learned Single Judge after considering all the facts and circumstances of the case and the legal provisions and, therefore, the impugned judgment and order of the learned single Judge should not be interfered with. According to him, the appellants are not able to point out any infirmity in the judgment and order of the learned Single Judge and, therefore also, it should not be interfered with by this Court in these appeals.

As against that, Mr. Sahani, the learned advocate for the appellants herein has submitted that except these two workmen, all the workmen have been transferred to other place and these two workmen have been retrenched.

We have considered the submissions from both the sides. We have also perused the judgment and award passed by the labour court as also the impugned judgment and order passed by the learned Single Judge of this Court in aforesaid petitions. We are of the opinion that basically, the labour court has committed error in setting aside the order of termination. We are of the opinion that the findings recorded by the labour court for setting aside the order of termination are not in accordance with law. There was a finding of the labour court that the amount of gratuity and notice pay and retrenchment compensation were paid to the appellant workman and no mala fides were alleged by the workmen against the respondent co. before the labour court. Yet the labour court set aside the termination orders only on the ground that some amount of earned leave was not paid to the appellants workmen and thereby came to the conclusion that the complete compensation was not paid to the workman and, therefore the order of termination of the service of the appellants workmen were bad in law.

The learned single Judge has examined all such findings given by the labour court in detail. According to us, the findings of the labour court were perverse and contrary to the facts on record and, therefore, the learned single Judge was perfectly justified in interfering with the same while passing the impugned judgment and order which does not call for any interference in these appeals. The learned single Judge has considered the minutes which has been produced at annexure B to the petitions (page 16 to 19 of the petitions and has also referred to the minutes in the impugned judgment and order and has also considered the decision reported in 1980 (1) LLJ page 239 and 1997 (2) LLJ 1157. The learned Single Judge has also considered that the respondent company was incurring heavy losses in the agriculture (west) zone which consists of three States namely Maharashtra, Madhya Pradesh and Gujarat and therefore, the respondent Co. had decided to close down its units and operations in the States of Madhya Pradesh and Gujarat. Learned single Judge also considered that thereafter, there were negotiations between the labour union representing the employees workmen in Gujarat and after said negotiations, a settlement took place between them and the respondent co. and as per the said settlement, the employees were either absorbed by transfer whereever it was possible and the rest were retrenched and discharged by paying necessary compensation as contemplated under the said settlement. The learned single Judge also appreciated that all these facts were brought by the respondent Co. before the labour court by examining its representative and yet, the labour court has recorded the findings contrary to the facts on record and, therefore, the learned single Judge has reached to the finding that the labour court has not properly read and considered the minutes of the meeting of 25th March,1980, confirmation letters of 27th March,1980 and the letter dated 15th April, 1980 written to the authority and the letter dated 28.8.1980 addressed to the workmen. The learned single Judge has kept the right of the workmen in tact to approach the labour court under section 33(C)(2) of the Industrial Disputes Act, 1947.

After considering the submissions from both the sides at length and also considering the reasons given by the learned Single Judge while passing the impugned judgment and order, we are of the opinion that the learned Single Judge has not committed any error, much less an error apparent on the face of the record. Mr. Sahani, the learned advocate for the appellants has not been able to point out any infirmity in the impugned

judgment and order of the learned single Judge. We are, therefore, of the opinion that there is no merit in these appeals and therefore, both these appeals are liable to be dismissed.

Accordingly, both these appeals are dismissed. Notice in both the appeals shall stand discharged. There shall be no order as to costs.

In view of the aforesaid order passed on the main appeals, there shall be no orders on the aforesaid civil applications. Same shall, therefore, stand disposed of accordingly.

In the main special civil applications which have been filed by the petitioner Company, the respondent in appeal, the learned single Judge has directed to deposit Rs.2,000/- each in both the petition being the expenses to be paid to the respective workman. Accordingly, the said amount has been deposited by the company before this court and the said amount is lying in the Registry of this Court. We, therefor, direct the office to pay the said amount of Rs.2000/- to each workman, appellant herein, by account payee cheque in the names of respective workman.

We hope that if any legally permissible amount is due in favour of the respective workman, the Company will definitely consider the same and pay to the respective workman.

10.12.1999.

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Vyas